

SEP 23 1976

MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

October Term, 1975

No. 75-1827

LEON GREENBERG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY TO BRIEF FOR THE UNITED
STATES IN OPPOSITION TO PETITION

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of Counsel.

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**REPLY TO GOVERNMENT'S ARGUMENT
NUMBER TWO**

The United States contends in footnote 4 (Brief in Opp. 5) that "[i]ndeed petitioner never asked to have the names deleted from the indictment before or during trial." That is a patent misstatement.

In his omnibus motion filed prior to the trial, petitioner moved to strike the surplusage of the designation of Paul Grossinger and Bernard Roth as "unindicted co-conspirators"

from the indictment (69a-72a).^{*} Petitioner specifically noted that the "reference in the indictment is highly prejudicial to the defendant and goes beyond the form of accusation authorized to be made by a grand jury" (69a). In addition, petitioner specifically requested that the "reference should be deleted from the indictment" (69a).

Moreover, in his exception to the court's charge with respect to Paul Grossinger and Bernard Roth, petitioner's counsel "except[ed] to the reading to the jury, this phrase unindicted co-conspirators" (675).

Respectfully submitted,

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^{*}Refers to pages of appendix filed in United States Court of Appeals for the Second Circuit.